IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 28873 of 2005(K)

OS.52/2001 of MUNSIFF COURT, TIRUR
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PETITIONER:

ARAYANTEPURACKAL ASSAINAR ALIAS
KUNJUMON,
S/O.MUHAMMEDKUTTY, P.O.PARAVANNA, PACHATTIRI AMSOM
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.P.MUJEEB

RESPONDENTS:
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1. SAINABA, D/O.ARAYANTEPURACKAL
MUHAMMEDKUTTY, P.O.PARAVANNA,
PACHATTIRI AMSOM, TIRUR TALUK,
MALAPPURAM DISTRICT.

2. JAMEELA, W/O.NECHIYENGAL MUHAMMED ALIAS
KUNJUMON MOORKANAD AMSOM DESOM,
TIRUR TALUK, MALAPPURAM DISTRICT.

*3. ABDUL HAMEED,
IRIMBILI AMSOM DESOM, MANKERI,
TIRUR TALUK, MALAPPURAM DISTRICT.

4. PATHU, W/O.ARAYANTEPURACKAL
MUHAMMEDKUTTY, PACHATTIRI AMSOM,
PARAVANNA DESOM, TIRUR TALUK,
MALAPPURAM DISTRICT.
(*THE 3RD RESPONDENT IS DELETED FROM THE PARTY ARRAY AS PER ORDER DT.20.2.06 IN WPC(C) 28873/05)

BY ADV. SRI.R.RAJESH KORMATH
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SRI.V.S.ROBIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 28873 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT FILED BY THE PETITIONER IN OS NO.52 OF 2001 DT.5.3.2001 BEFORE THE FILED OF MUNSIFF'S COURT, TIRUR.

EXT.P2 : TRUE COPY OF AMENDMENT PETITION DT.31.8.2005 FILED BY THE PETITIONER.

EXT.P3 : TRUE COPY OF THE TYPED ORDER IN IA NO.1907/05 IN OS NO.52/2001 DT.23.9.05 ON THE FILE OF MUNSIFF'S COURT, TIRUR.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28873 OF 2005

Dated this the 18th day of June, 2007

JUDGMENT

The learned counsel for the petitioner submits that at the time when the application for amendment was filed, nobody has been examined in the suit and in that sense actual trial had not commenced. The issue is covered by judgment of this Court in **Neelakandan Nair v. Parameswara Kurup** [2003 (3) KLT 990]. Though there is a contention that on allowing the amendment, will alter the character of the suit, the suit will continue to be a suit for partition. The effect of the amendment will be only on the total extent of the property and its re-survey number only. The above submission is correct.

Under these circumstances, I am inclined to set aside the impugned order and allow the amendment application, but the same will only be on strict conditions. Accordingly, Ext.P3 will stand set aside and the application for amendment will stand allowed on condition that the petitioner pays to the respondents who have entered appearance in this Court, through their counsel in this Court a sum of Rs.1,500/- and to the High Court Legal Services Committee Rs.500/- within one month from today. Failing such payments the Writ Petition will stand dismissed. Under such an event the impugned order will become operative. If

payment is made and the order allowing the amendment becomes operative, the court below will give an opportunity to the respondents to file additional written statement, if they so choose.

PIUS C. KURIAKOSE, JUDGE

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